

MONTANA LEGISLATIVE HISTORY

Chapter 246 19 79

Bill H \_\_\_\_\_ S 293 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Mar 06 ☒ C

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Date Out Mar 06 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 08 ☒ C

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Feb 08 ☒ C

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Did this bill originate in an interim committee? Yes No

Committee \_\_\_\_\_

Report \_\_\_\_\_

1 *Senate* BILL NO. *293*  
 2 INTRODUCED BY *Thomas*

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA  
 5 YOUTH COURT ACT TO PROVIDE FOR RESTITUTION AS A PERMISSIBLE  
 6 DISPOSITION OF A CASE; AMENDING SECTIONS 41-5-102, 41-5-103,  
 7 41-5-403, 41-5-522, AND 41-5-523, MCA."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 41-5-102, MCA, is amended to read:

11 "41-5-102. Declaration of purpose. The Montana Youth  
 12 Court Act shall be interpreted and construed to effectuate  
 13 the following express legislative purposes:

14 (1) to preserve the unity and welfare of the family  
 15 whenever possible and to provide for the care, protection,  
 16 and wholesome mental and physical development of a youth  
 17 coming within the provisions of the Montana Youth Court Act;

18 (2) to remove from youth committing violations of the  
 19 law the element of retribution and to substitute therefor a  
 20 program of supervision, care, and rehabilitation, and, in  
 21 appropriate cases, restitution as ordered by the youth  
 22 court;

23 (3) to achieve the purposes of (1) and (2) of this  
 24 section in a family environment whenever possible,  
 25 separating the youth from his parents only when necessary

1 for the welfare of the youth or for the safety and  
 2 protection of the community;

3 (4) to provide judicial procedures in which the  
 4 parties are assured a fair hearing and recognition and  
 5 enforcement of their constitutional and statutory rights."

6 Section 2. Section 41-5-103, MCA, is amended to read:

7 "41-5-103. Definitions. For the purposes of the  
 8 Montana Youth Court Act, unless otherwise stated the  
 9 following definitions apply:

10 (1) "Adult" means an individual who is 18 years of age  
 11 or older.

12 (2) "Agency" means the department of institutions, the  
 13 department of social and rehabilitation services, and any  
 14 division or department of either.

15 (3) "Commit" means to transfer to legal custody.

16 (4) "Court", when used without further qualification,  
 17 means the youth court of the district court.

18 (5) "Foster home" means a private residence approved  
 19 by the court for placement of a youth.

20 (6) "Guardianship" means the status created and  
 21 defined by law between a youth and an adult with the  
 22 reciprocal rights, duties, and responsibilities.

23 (7) "Judge", when used without further qualification,  
 24 means the judge of the youth court.

25 (8) (a) "Legal custody" means the legal status created

1 by order of a court of competent jurisdiction that gives a  
2 person the right and duty to:

- 3 (i) have physical custody of the youth;
- 4 (ii) determine with whom the youth shall live and for  
5 what period;
- 6 (iii) protect, train, and discipline the youth; and
- 7 (iv) provide the youth with food, shelter, education,  
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10 shall personally exercise his rights and duties as guardian  
11 unless otherwise authorized by the court entering the order.

12 (9) "Parent" means the natural or adoptive parent but  
13 does not include a person whose parental rights have been  
14 judicially terminated, nor does it include the putative  
15 father of an illegitimate youth unless his paternity is  
16 established by an adjudication or by other clear and  
17 convincing proof.

18 (10) "Youth" means an individual who is less than 18  
19 years of age without regard to sex or emancipation.

20 (11) "Youth court" means the court established pursuant  
21 to this chapter to hear all proceedings in which a youth is  
22 alleged to be a delinquent youth, a youth in need of  
23 supervision, or a youth in need of care and includes the  
24 youth court, the judge, and probation officers.

25 (12) "Delinquent youth" means a youth:

1 (a) who has committed an offense which, if committed  
2 by an adult, would constitute a criminal offense;

3 (b) who, having been placed on probation as a  
4 delinquent youth or a youth in need of supervision, violates  
5 any condition of his probation.

6 (13) "Youth in need of supervision" means a youth who  
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15 (c) being subject to compulsory school attendance, is  
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17 (d) has committed any of the acts of a delinquent  
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24 but does not include a person who has only physical custody.

25 (16) "Necessary parties" include the youth, his

1 parents, guardian, custodian, or spouse.

2 (17) "State youth correctional facility" means a  
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4 youth such as Pine Hills school in Miles City, and Mountain  
5 View school in Helena, and Swan River youth forest camp.

6 (18) "Shelter care" means the temporary care of youth  
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25 (2) (b) placement of the youth in a licensed foster

1 home or other home approved by the court;

2 (3) (c) placement of the youth in a private agency  
3 responsible for the care and rehabilitation of such a youth,  
4 including but not limited to a district youth guidance home;

5 (4) (d) transfer of legal custody of the youth to the  
6 department of institutions, provided that such commitment  
7 does not authorize the department of institutions to place  
8 the youth in a state youth correctional facility, and such  
9 commitment may not exceed a period of 6 months without a  
10 subsequent order of the court, after notice and hearing;

11 (e) restitution upon approval of the youth court  
12 judge.

13 (2) In determining whether restitution is appropriate  
14 in a particular case, the following factors may be  
15 considered in addition to any other evidence:

16 (a) age of the youth;

17 (b) ability of the youth to pay;

18 (c) ability of the parents or legal guardian to pay;

19 (d) amount of damage to the victim; and

20 (e) legal remedies of the victim."

21 Section 4. Section 41-5-522, MCA, is amended to read:

22 "41-5-522. Dispositional hearing. (1) As soon as  
23 practicable after a youth is found to be a delinquent youth  
24 or a youth in need of supervision, the court shall conduct a  
25 dispositional hearing.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of

the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

~~(6) In determining whether restitution, as authorized by 41-5-523(1)(f), is appropriate in a particular case, the following factors may be considered in addition to any other evidence:~~

~~(a) age of the youth;~~

~~(b) ability of the youth to pay;~~

~~(c) ability of the parents or legal guardian to pay;~~

~~(d) amount of damage to the victim; and~~

~~(e) legal remedies of the victim."~~

Section 5. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

1 (c) place the youth in a private agency responsible  
2 for the care and rehabilitation of such a youth, including  
3 but not limited to a district youth guidance home;

4 (d) transfer legal custody to the department of  
5 institutions; provided, however, that in the case of a youth  
6 in need of supervision, such transfer of custody shall not  
7 authorize the department of institutions to place the youth  
8 in a state youth correctional facility and such custody  
9 shall not continue for a period of more than 6 months  
10 without a subsequent court order after notice and hearing;

11 (e) such further care and treatment or evaluation that  
12 the court deems beneficial to the youth, consistent with  
13 subsection (d) of this section;

14 ~~(f) order restitution by the youth or by the parents~~  
15 ~~or legal guardian of the youth in an amount not to exceed~~  
16 ~~\$1,500.~~

17 (2) At any time after the youth has been taken into  
18 custody, the court may, with the consent of the youth in the  
19 manner provided in 41-5-303 for consent by a youth to waiver  
20 of his constitutional rights or after the youth has been  
21 adjudicated delinquent or in need of supervision:

22 (a) order the youth to be evaluated for a period not  
23 to exceed 45 days of evaluation at a reception and  
24 evaluation center for youths; or

25 (b) in the case of a delinquent youth 16 years or

1 older whom the court deems a suitable person for placement  
2 at a youth forest camp, notify the director of the  
3 department of institutions of the finding. The director of  
4 the department of institutions shall then designate to the  
5 court the facility to which the youth shall be delivered for  
6 evaluation. The court may then commit the youth to the  
7 department of institutions for a period not to exceed 45  
8 days for the purpose of evaluation as to the youth's  
9 suitability for placement and order the youth delivered for  
10 evaluation to the youth facility designated by the director.  
11 If after the evaluation the department of institutions  
12 reports to the court that such child is suitable for  
13 placement in a youth forest camp and if there is space  
14 available at a camp, the court may then commit such child  
15 directly to the youth forest camp under the terms of  
16 commitment of this chapter. If the department of  
17 institutions reports and states the reasons to the court why  
18 the youth is not suitable for placement, the youth shall be  
19 returned to the court for such further disposition as the  
20 court may deem advisable under the provisions of this  
21 chapter. The costs of transporting the youth to the  
22 designated youth facility for evaluation and cost of  
23 returning the youth to the court shall be borne by the  
24 county of residence of the youth.

25 (3) No youth shall be committed or transferred to a

1 penal institution or other facility used for the execution  
2 of sentence of adult persons convicted of crimes except as  
3 provided by subsection (2)(b).

4 (4) Any order of the court may be modified at any  
5 time.

6 (5) Whenever the court vests legal custody in an  
7 agency, institution, or department, it must transmit with  
8 the dispositional judgment copies of a medical report and  
9 such other clinical, predisposition, or other reports and  
10 information pertinent to the care and treatment of the  
11 youth.

12 (6) The order of commitment to the department of  
13 institutions shall read as follows:

14 ORDER OF COMMITMENT

15 State of Montana, County of ..... ss:

16 In the district court for the .... judicial district.

17 On the .... day of ..... 19... .., a minor of this  
18 county, .... years of age, was brought before me charged  
19 with ..... Upon due proof I find that .... is a suitable  
20 person to be committed to the department of institutions.

21 It is ordered that .... be committed to the department  
22 of institutions until .....

23 The names, addresses, and occupations of the parents  
24 are:

25 Name Address Occupation

1 .....  
2 .....  
3 .....  
4 .....  
5 .....  
6 .....  
7 .....  
8 .....  
9 .....  
10 .....  
11 .....  
12 .....  
13 .....  
14 .....  
15 .....  
16 .....  
17 .....  
18 .....  
19 .....  
20 .....  
21 .....  
22 .....  
23 .....  
24 .....  
25 .....

The names and addresses of their nearest relatives are:

Witness my hand this .... day of ..... A.D. 19...

Judge "

-End-

Senator Towe moved that the bill do pass. Motion carried unanimously.

CONSIDERATION OF SENATE BILL 293:

Senator Towe gave an explanation of this bill, which is an act to revise youth court act to allow restitution. The sponsor of this bill is Senator Thomas, but he was not able to attend.

Becky Giles gave a statement in support of this bill and explained how a youth who had been paroled from Pine Hills wrecked five cars and how they suffered much loss from this youth's action.

Jerry Metzger, coordinator for the youth court in Great Falls, stated he was the co-author of this bill and gave testimony in support of this bill.

Senator Thomas arrived at the hearing and gave a further explanation of this bill.

There were no further proponents or opponents.

Senator Van Valkenburg questioned why there was a limitation of \$1,500.00 and felt that if the kid had a \$1,500.00 hot rod, why should he not lose his hot rod.

Senator Turnage said that he did not feel that the guardians should be liable and he stated that there are some youths who would just love to stick mom and dad just to get even.

There was further discussion on problems in the bill.

Senator Towe moved that the bill be amended on page 9, line 14 by inserting "." and strike the remainder of new material following the word "youth". The motion carried unanimously.

Senator Towe moved that this bill do pass, as amended. The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 288:

Ward Shanahan, representing the Business Section of the State Bar of Montana, offered some amendments to this bill. Senator Towe moved that we reconsider action taken previously on this bill.

Senator Towe moved the adoption of the amendments. The motion carried unanimously.

Senator Towe moved that the bill do pass as amended. The motion carried unanimously.

There being no further business, the meeting was adjourned at 11:04 a.m.

*Ernest R. Leland*



for a very serious matter. The need comes about because I don't think it is provided in many cases, and an interpreter is sometimes hard to find and we need good people to serve in that way. But now the SRS has a service for deaf people which is the proper place for courts of law or if need be to go there and qualify to serve as an interpreter.

BETTY VAN TIEGAN:

The deaf people are very pleased with this bill and we encourage your consideration in its passage. This gives full protection to deaf people. Sometimes when someone has to go court and they are deaf, they might be left there without an interpreter and this is very time consuming. With the help of our interpreter we can be first-class citizens like everyone else.

WM: ROMINE:

Montana Sheriffs and Peace Officers. Basically we support this bill, but one of the problems is traffic offenses and having to find an interpreter. The areas with traffic offenses should be exempted out. I think the bill should be amended, in section 9, page 6, which deals with compensation. The sheriffs budgets are set by the County Commissioners. Is the sheriff the appointing officer. It should be made clear. The other question I have is the granting of waiver, lines 14 to 16, section 10. If they don't have an interpreter they are not effectively waiving their rights or understanding their rights.

SENATOR THOMAS:

I want to offer some amendments. We would like to have change the part that the sheriffs and peace officers are concerned about.

There were no questions and no further discussion and the hearing closed on

House Bill No. 278.

HOUSE BILL NO. 293:

Senator Thomas. This is a restitution bill. The reason is, number 1, to provide a mechanism for rehabilitating a youth who has destroyed property. And number 2, if a youth causes some kind of vandalism, to make some kind of restitution to the person whose home has been broken into.

GERALD W. METZGER:

8th Judicial District, Youth Court Services. There are four reasons why we need a restitution bill. 1. To provide specific legal sanction. It is not specifically stated in the code now and the only way you can do it is through the judge. 2. The second reason is to provide due process of the youth and this again makes the judge responsible for the amount of money to be paid to the victim. 3. It goes back to 1976 and the New Jersey Supreme Court case where it was ordered that the only one to order restitution is the Youth Court Judge. He gave examples of trouble kids get into and once they are involved in a recidivist act. By this act being included we are looking at making the youth responsible and

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not his parents. If we are looking at just straight dollars we have contracts over \$12,000 dollars and over \$6,000 has come back to the victims. The last thing is the order of commitment and he explained.

REPRESENTATIVE CONROY: How would this work with regard to making the youth pay.

MR. METZGER: We realize the youth cannot pay for it. Discussion followed about how this might be accomplished.

Discussion about page 9 and the stricken language.

Then followed discussion about the \$1500 limit.

There was no further discussion and no further questions, the hearing closed on

Senate Bill No. 293.

SENATE BILL NO. 382: Senator Thomas. This bill was requested by the County Attorney of Yellowstone and was part of a study by the Crime Control Board. It removes the 15 days on a continuance.

TOM HONZEL: County Attorneys Association. This is not a county attorneys bill but it did come out of the youth counsel and the study made on Youth Court legal problems. One of the problems has been the strict time limits. As a general rule we can get most of these cases heard within 15 days but sometimes not. He elaborated further.

KAREN MIKOTA: League of Women Voters. We do feel there should be some maximum limit rather than leaving it open. We do oppose the bill as it now stands.

REPRESENTATIVE LORY: With the amendment the Senate put on, you can't have a continuance unless the youth has absconded. Is this true.

MR. HONZEL: If the youth is held in custody it is imperative that you have the hearing right away. It would only apply to those who are not in custody.

There was no further discussion and the hearing closed on Senate Bill No. 382.

SENATE BILL NO. 374: Senator Van Valkenburg. This bill would change the divorce law slightly. It modifies and terminates provisions for maintenance, support, and property disposition, upon a showing of changed circumstances so

JUDICIARY COMMITTEE  
EXECUTIVE SESSION  
March 6, 1979

Following the regular meeting the committee went into executive session at 9:10 a.m. in room 436 of the Capitol Building on Tuesday, March 6. All members were present except Representatives Eudaily, Holmes and Rosenthal, all excused to take a tour of the State Prison at Warm Springs. They all left proxy votes for bills to be acted upon.

Chairman Scully appointed the following sub-committees:

Representative Eudaily was already appointed as Chairman of the Elections sub-committee and Representatives Uhde and Anderson were added.

For making a composite and study of the sentencing bills, Representative Pavlovich was appointed as Chairman and Representatives Teague, Holmes, and Seifert were added. They are to contact Larry Zanto and get a list from him, as to what bills are where and with the same subject matter.

SENATE BILL NO. 296: Representative Conroy moved "not concurred in". The motion carried with Representatives Lory and Kemmis voting "no".

SENATE BILL NO. 86: Representative Keyser moved "not concurred in". The motion carried with the vote unanimous.

SENATE BILL NO. 293: Representative Seifert moved "be concurred in". The motion carried with the vote unanimous. Representative Seifert will carry on the floor.

SENATE BILL NO. 382: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Pavlovich will carry on the floor.

SENATE BILL NO. 423: Representative Lory moved "be concurred in". The motion carried with Representative Keedy voting "no". Representative Curtiss will carry on the floor.

SENATE BILL NO. 341: Representative Conroy moved "be concurred in". Representative Keyser moved to amend on Page 2, line 9, insert: "monthly". The motion carried with the vote unanimous. (copy attached) Representative Conroy moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Conroy will carry on the floor.

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15 ~~considered in addition to any other evidence:~~

16 ~~(a) age of the youth;~~

17 ~~(b) ability of the youth to pay;~~

18 ~~(c) ability of the parents or legal guardian to pay;~~

19 ~~(d) amount of damage to the victim; and~~

20 ~~(e) legal remedies of the victim."~~

21 Section 4. Section 41-5-522, MCA, is amended to read:

22 "41-5-522. Disposition hearing. (1) As soon as  
23 practicable after a youth is found to be a delinquent youth  
24 or a youth in need of supervision, the court shall conduct a  
25 dispositional hearing.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of

the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

~~(6) In determining whether restitution, as authorized by 41-5-523(1)(f), is appropriate in a particular case, the following factors may be considered in addition to any other evidence:~~

- ~~(a) age of the youth;~~
- ~~(b) ability of the youth to pay;~~
- ~~(c) ability of the parents or legal guardian to pay;~~
- ~~(d) amount of damage to the victim; and~~
- ~~(e) legal remedies of the victim."~~

Section 5. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

- (a) place the youth on probation;
- (b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a state youth correctional facility and such custody shall not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section;

~~(f) order restitution by the youth or by the parents or legal guardian of the youth in an amount not to exceed \$1,500.~~

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth 16 years or

older whom the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a



1 penal institution or other facility used for the execution  
2 of sentence of adult persons convicted of crimes except as  
3 provided by subsection (2)(b).

4 (4) Any order of the court may be modified at any  
5 time.

6 (5) Whenever the court vests legal custody in an  
7 agency, institution, or department, it must transmit with  
8 the dispositional judgment copies of a medical report and  
9 such other clinical, predisposition, or other reports and  
10 information pertinent to the care and treatment of the  
11 youth.

12 (6) The order of commitment to the department of  
13 institutions shall read as follows:

14 ORDER OF COMMITMENT

15 State of Montana, County of ....., ss:

16 In the district court for the ..... judicial district.

17 On the .... day of ..... 19... .., a minor of this  
18 county, .... years of age, was brought before me charged  
19 with ..... Upon due proof I find that .... is a suitable  
20 person to be committed to the department of institutions.

21 It is ordered that .... be committed to the department  
22 of institutions until .....

23 The names, addresses, and occupations of the parents  
24 are:

25 Name Address Occupation

1 .....

2 .....

3 The names and addresses of their nearest relatives are:

4 .....

5 .....

6 Witness my hand this .... day of ....., A.D. 19...

7 .....

8 Judge "

-End-